

AMENDED IN SENATE AUGUST 27, 2003

AMENDED IN SENATE AUGUST 21, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 739

Introduced by Assembly Member Jackson

February 19, 2003

An act to amend Section 706.030 of the Code of Civil Procedure, and to amend Sections 4200, 4201, 4204, 5235, 5237, 5240, 5247, 5253, and 17309 of, and to add Sections 17311, 17311.5, and 17311.7 to, the Family Code, relating to child support, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 739, as amended, Jackson. Child support: State Disbursement Unit.

Existing law obligates a parent to support his or her child. Existing federal law, in connection with child support enforcement, requires that the state implement a state disbursement unit to retain the state's eligibility for certain federal funds. Existing law creates within the Department of Child Support Services, in conjunction with the Franchise Tax Board, the California Child Support Automation System, which operates in all California counties and includes the State Disbursement Unit.

This bill would create the Child Support Payment Trust Fund in the State Treasury, which would be administered by the Department of Child Support Services. The bill would authorize the state to deposit payments received by the State Disbursement Unit, as specified, into the Child Support Payment Trust Fund, for the purpose of processing and providing child support payments. The bill would provide that the fund is continuously appropriated, and that the ~~General Fund portion~~ *state share* of interest and other earnings accruing on the fund are available to offset certain General Fund costs according to a specified priority.

This bill would also authorize the department to establish and administer a revolving account within the Child Support Payment Trust Fund in an amount not to exceed \$600,000,000 to ensure the timely disbursement of child support. The bill would authorize the department to enter into a trust agreement with a trustee or fiscal intermediary to receive or disburse child support collections, and would further provide that any trust accounts created by the trust agreements may be held outside the State Treasury. The bill would require the auditor and controller of each county to perform closeout activities as directed by the Department of Child Support Services. The bill would require those persons and the local child support agency director to transfer undisbursed child support collections and the interest earned on those funds to the Department of Child Support Services for deposit in the Child Support Payment Trust Fund. By imposing additional duties on local officers and employees, the bill would create a state-mandated local program.

The bill would enact other related changes. The bill would also change references to the Child Support Centralized Collection and Distribution Unit to refer to the State Disbursement Unit.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 706.030 of the Code of Civil Procedure
2 is amended to read:
3 706.030. (a) A “withholding order for support” is an
4 earnings withholding order issued on a writ of execution to collect
5 delinquent amounts payable under a judgment for the support of
6 a child, or spouse or former spouse, of the judgment debtor. A
7 withholding order for support shall be denoted as such on its face.
8 (b) The local child support agency may issue a withholding
9 order for support on a notice of levy pursuant to Section 17522 of
10 the Family Code to collect a support obligation.
11 (1) When the local child support agency issues a withholding
12 order for support, a reference in this chapter to a levying officer is
13 deemed to mean the local child support agency who issues the
14 withholding order for support.
15 (2) Service of a withholding order for support issued by the
16 local child support agency may be made by first-class mail or in
17 any other manner described in Section 706.101. Service of a
18 withholding order for support issued by the local child support
19 agency is complete when it is received by the employer or a person
20 described in paragraph (1) or (2) of subdivision (a) of Section
21 706.101, or if service is by first-class mail, service is complete as
22 specified in Section 1013.
23 (3) The local child support agency shall serve upon the
24 employer the withholding order for support, a copy of the order,
25 and a notice informing the support obligor of the effect of the order
26 and of his or her right to hearings and remedies provided in this
27 chapter and in the Family Code. The notice shall be accompanied
28 by the forms necessary to obtain an administrative review and a
29 judicial hearing and instructions on how to file the forms. Within
30 10 days from the date of service, the employer shall deliver to the
31 support obligor a copy of the withholding order for support, the
32 forms to obtain an administrative review and judicial hearing, and
33 the notice. If the support obligor is no longer employed by the
34 employer and the employer does not owe the support obligor any

1 earnings, the employer shall inform the local child support agency
2 that the support obligor is no longer employed by the employer.

3 (4) An employer who fails to comply with paragraph (3) shall
4 be subject to a civil penalty of five hundred dollars (\$500) for each
5 occurrence.

6 (5) The local child support agency shall provide for an
7 administrative review to reconsider or modify the amount to be
8 withheld for arrearages pursuant to the withholding order for
9 support, if the support obligor requests a review at any time after
10 service of the withholding order. The local child support agency
11 shall provide the review in the same manner and timeframes
12 provided for resolution of a complaint pursuant to Section 17800
13 of the Family Code. The local child support agency shall notify the
14 employer if the review results in any modifications to the
15 withholding order for support. If the local child support agency
16 cannot complete the administrative review within 30 calendar
17 days of receipt of the complaint, the local child support agency
18 shall notify the employer to suspend withholding any disputed
19 amount pending the completion of the review and the
20 determination by the local child support agency.

21 (6) Nothing in this section prohibits the support obligor from
22 seeking a judicial determination of arrearages pursuant to
23 subdivision (c) of Section 17256 of the Family Code or from filing
24 a motion for equitable division of earnings pursuant to Section
25 706.052 either prior to or after the administrative review provided
26 by this section. Within five business days after receiving notice of
27 the obligor having filed for judicial relief pursuant to this section,
28 the local child support agency shall notify the employer to suspend
29 withholding any disputed amount pending a determination by the
30 court. The employer shall then adjust the withholding within not
31 more than nine days of receiving the notice from the local child
32 support agency.

33 (c) Notwithstanding any other provision of this chapter:

34 (1) An employer shall continue to withhold pursuant to a
35 withholding order for support until the earliest of the dates
36 specified in paragraph (1), (2), or (3) of subdivision (a) of Section
37 706.022, except that a withholding order for support shall
38 automatically terminate one year after the employment of the
39 employee by the employer terminates.

1 (2) A withholding order for support has priority over any other
2 earnings withholding order. An employer upon whom a
3 withholding order for support is served shall withhold and pay
4 over earnings of the employee pursuant to that order
5 notwithstanding the requirements of another earnings withholding
6 order.

7 (3) Subject to paragraph (2) and to Article 3 (commencing with
8 Section 706.050), an employer shall withhold earnings pursuant
9 to both a withholding order for support and another earnings
10 withholding order simultaneously.

11 (4) An employer who willfully fails to withhold and forward
12 support pursuant to a valid earnings withholding order for support
13 issued and served upon the employer pursuant to this chapter is
14 liable to the support obligee, as defined in Section 5214 of the
15 Family Code, for the amount of support not withheld, forwarded,
16 or otherwise paid to the support obligee.

17 (5) Notwithstanding any other provision of law, an employer
18 shall send all earnings withheld pursuant to a withholding order for
19 support to the levying officer or the State Disbursement Unit as
20 described in Section 17309 of the Family Code within the time
21 period specified by federal law.

22 (6) Once the State Disbursement Unit as described in Section
23 17309 of the Family Code is operational, all support payments
24 made pursuant to an earnings withholding order shall be made to
25 that unit.

26 (7) Earnings withheld pursuant to an earnings withholding
27 order for support shall be credited toward satisfaction of a support
28 judgment as specified in Section 695.221.

29 SEC. 2. Section 4200 of the Family Code is amended to read:

30 4200. In any proceeding where a court makes or has made an
31 order requiring the payment of child support to a parent receiving
32 welfare moneys for the maintenance of children for whom support
33 may be ordered, the court shall do both of the following:

34 (a) Direct that the payments of support shall be made to the
35 county officer designated by the court for that purpose. Once the
36 State Disbursement Unit is implemented pursuant to Section
37 17309, all payments shall be directed to the State Disbursement
38 Unit instead of the county officer designated by the court.

39 (b) Direct the local child support agency to appear on behalf of
40 the welfare recipient in any proceeding to enforce the order.

1 SEC. 3. Section 4201 of the Family Code is amended to read:
2 4201. In any proceeding where a court makes or has made an
3 order requiring the payment of child support to the person having
4 custody of a child for whom support may be ordered, the court may
5 do either or both of the following:

6 (a) Direct that the payments shall be made to the county officer
7 designated by the court for that purpose. Once the State
8 Disbursement Unit is implemented pursuant to Section 17309, all
9 payments shall be directed to the State Disbursement Unit instead
10 of the county officer designated by the court.

11 (b) Direct the local child support agency to appear on behalf of
12 the minor children in any proceeding to enforce the order.

13 SEC. 4. Section 4204 of the Family Code is amended to read:
14 4204. Notwithstanding any other provision of law, in any
15 proceeding where the court has made an order requiring the
16 payment of child support to a person having custody of a child and
17 the child support is subsequently assigned to the county pursuant
18 to Section 11477 of the Welfare and Institutions Code or the person
19 having custody has requested the local child support agency to
20 provide child support enforcement services pursuant to Section
21 17400, the local child support agency may issue a notice directing
22 that the payments shall be made to the local child support agency,
23 another county office, or the State Disbursement Unit pursuant to
24 Section 17309. The notice shall be served on both the support
25 obligor and obligee in compliance with Section 1013 of the Code
26 of Civil Procedure. The local child support agency shall file the
27 notice in the action in which the support order was issued.

28 SEC. 5. Section 5235 of the Family Code is amended to read:
29 5235. (a) The employer shall continue to withhold and
30 forward support as required by the assignment order until served
31 with notice terminating the assignment order. If an employer
32 withholds support as required by the assignment order, the obligor
33 shall not be held in contempt or subject to criminal prosecution for
34 nonpayment of the support that was withheld by the employer but
35 not received by the obligee. If the employer withheld the support
36 but failed to forward the payments to the obligee, the employer
37 shall be liable for the payments, including interest, as provided in
38 Section 5241.



1 (b) Within 10 days of service of a substitution of payee on the
2 employer, the employer shall forward all subsequent support to the
3 governmental entity or other payee that sent the substitution.

4 (c) The employer shall send the amounts withheld to the
5 obligee within the timeframe specified in federal law and shall
6 report to the obligee the date on which the amount was withheld
7 from the obligor's wages.

8 (d) The employer may deduct from the earnings of the
9 employee the sum of one dollar (\$1) for each payment made
10 pursuant to the order.

11 (e) Once the State Disbursement Unit as required by Section
12 17309 is operational, the employer shall send all earnings withheld
13 pursuant to this chapter to the State Disbursement Unit instead of
14 the obligee.

15 SEC. 6. Section 5237 of the Family Code is amended to read:

16 5237. (a) Except as provided in subdivisions (b) and (c), the
17 obligee shall notify the employer of the obligor, by first-class mail,
18 postage prepaid, of any change of address within a reasonable
19 period of time after the change.

20 (b) Where payments have been ordered to be made to a county
21 officer designated by the court, the obligee who is the parent,
22 guardian, or other person entitled to receive payment through the
23 designated county officer shall notify the designated county
24 officer by first-class mail, postage prepaid, of any address change
25 within a reasonable period of time after the change.

26 (c) If the obligee is receiving support payments from the State
27 Disbursement Unit as required by Section 17309, the obligee shall
28 notify the State Disbursement Unit instead of the employer of the
29 obligor as provided in subdivision (a).

30 (d) If the employer, designated county officer, or the State
31 Disbursement Unit is unable to deliver payments under the
32 assignment order for a period of six months due to the failure of
33 the obligee to notify the employer, designated county officer, or
34 State Disbursement Unit, of a change of address, the employer,
35 designated county officer, or State Disbursement Unit shall not
36 make any further payments under the assignment order and shall
37 return all undeliverable payments to the obligor.

38 SEC. 7. Section 5240 of the Family Code is amended to read:

39 5240. Upon the filing and service of a motion and a notice of
40 motion by the obligor, the court shall terminate the service of an

1 assignment order if past due support has been paid in full,
2 including any interest due, and if any of the following conditions
3 exist:

4 (a) With regard to orders for spousal support, the death or
5 remarriage of the spouse to whom support is owed.

6 (b) With regard to orders for child support, the death or
7 emancipation of the child for whom support is owed.

8 (c) The court determines that there is good cause, as defined in
9 Section 5260, to terminate the assignment order. This subdivision
10 does not apply if there has been more than one application for an
11 assignment order.

12 (d) The obligor meets the conditions of an alternative
13 arrangement specified in paragraph (2) of subdivision (b) of
14 Section 5260, and a wage assignment has not been previously
15 terminated and subsequently initiated.

16 (e) There is no longer a current order for support.

17 (f) The termination of the stay of an assignment order under
18 Section 5261 was improper, but only if that termination was based
19 upon the obligor's failure to make timely support payments as
20 described in subdivision (b) of Section 5261.

21 (g) The employer or agency designated to provide services
22 under Title IV-D of the Social Security Act or the State
23 Disbursement Unit is unable to deliver payment for a period of six
24 months due to the failure of the obligee to notify that employer or
25 agency or the State Disbursement Unit of a change in the obligee's
26 address.

27 SEC. 8. Section 5247 of the Family Code is amended to read:

28 5247. Neither the local child support agency nor an employer
29 shall be subject to any civil liability for any amount withheld and
30 paid to the obligee, the local child support agency, or the State
31 Disbursement Unit pursuant to an earnings assignment order or
32 notice of assignment.

33 SEC. 9. Section 5253 of the Family Code is amended to read:

34 5253. Upon receipt of the application, the court shall issue,
35 without notice to the obligor, an assignment order requiring the
36 employer of the obligor to pay to the obligee or the State
37 Disbursement Unit that portion of the earnings of the obligor due
38 or to become due in the future as will be sufficient to pay an amount
39 to cover both of the following:

40 (a) The amount ordered by the court for support.

(b) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage or past due support amount.

SEC. 10. Section 17309 of the Family Code is amended to read:

17309. Effective October 1, 1998, the state shall operate a State Disbursement Unit as required by federal law (42 U.S.C. Secs. 654 (27), 654a(g), and 654b).

SEC. 11. Section 17311 is added to the Family Code, to read:

17311. (a) The Child Support Payment Trust Fund is hereby created in the State Treasury. The department shall administer the fund.

(b) (1) The state may deposit child support payments received by the State Disbursement Unit, including those amounts that result in overpayment of child support, into the Child Support Payment Trust Fund, for the purpose of processing and providing child support payments. Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the purposes of disbursing child support payments from the State Disbursement Unit.

(2) The ~~General Fund portion~~ *state share* of the interest and other earnings that accrue on the fund shall be available to the department and used to offset the the following General Fund costs in this order:

(A) Any transfers made to the Child Support Payment Trust Fund from the General Fund.

(B) The cost of administering the State Disbursement Unit, subject to appropriation by the Legislature.

(C) Other child support program activities, subject to appropriation by the Legislature.

(c) The department may establish and administer a revolving account in the Child Support Payment Trust Fund in an amount not to exceed six hundred million dollars (\$600,000,000) to ensure the timely disbursement of child support. This amount may be adjusted by the Director of Finance upon notification of the Legislature as required, to meet payment timeframes required under federal law.

(d) It is the intent of the Legislature to provide transfers from the General Fund to provide startup funds for the Child Support Payment Trust Fund so that, together with the balances transferred

1 pursuant to Section 17311.7, the Child Support Payment Trust
2 Fund will have sufficient cash on hand to make all child support
3 payments within the required timeframes.

4 SEC. 12. Section 17311.5 is added to the Family Code, to
5 read:

6 17311.5. The department may enter into a trust agreement
7 with a trustee or fiscal intermediary to receive or disburse child
8 support collections. The trust agreement may contain provisions
9 the department deems reasonable and proper for the security of the
10 child support payments. Any trust accounts created by the trust
11 agreements may be held outside the State Treasury.

12 SEC. 13. Section 17311.7 is added to the Family Code, to
13 read:

14 17311.7. (a) Upon the transfer of collection and
15 disbursement activities from each county to the State
16 Disbursement Unit, the auditor and controller of each county shall
17 perform closeout activities as directed by the Department of Child
18 Support Services to ensure accounting for all collections,
19 obligations, and payments. All child support collections
20 remaining undisbursed and interest earned on these funds shall be
21 transferred to the Department of Child Support Services for
22 deposit in the Child Support Payment Trust Fund. The local child
23 support agency director and auditor and controller shall perform
24 these activities based on guidelines provided by the department
25 and shall certify the results of these activities in a report submitted
26 to the department within one year of transfer of collection and
27 distribution functions to the state.

28 (b) The department may contract for the audit of each county
29 report submitted under subdivision (a). Each audit shall be
30 completed within one year after the receipt of the report from the
31 county.

32 SEC. 14. Notwithstanding Section 17610 of the Government
33 Code, if the Commission on State Mandates determines that this
34 act contains costs mandated by the state, reimbursement to local
35 agencies and school districts for those costs shall be made pursuant
36 to Part 7 (commencing with Section 17500) of Division 4 of Title
37 2 of the Government Code. If the statewide cost of the claim for
38 reimbursement does not exceed one million dollars (\$1,000,000),



- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

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